

ASSEMBLY, No. 2166

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

SYNOPSIS

Provides procedures for crediting certain dwellings used by agricultural workers in determination of municipality's fair share housing obligation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/14/2022)

1 AN ACT concerning farm worker housing and amending P.L.1985,
2 c.222.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
8 read as follows:

9 7. It shall be the duty of the council, seven months after the
10 confirmation of the last member initially appointed to the council,
11 or January 1, 1986, whichever is earlier, and from time to time
12 thereafter, to:

- 13 a. Determine housing regions of the State;
14 b. Estimate the present and prospective need for low and
15 moderate income housing at the State and regional levels;
16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair
18 share of the housing need in a given region which shall be
19 computed for a 10-year period.

20 Municipal fair share shall be determined after crediting on a one-
21 to-one basis each current unit of low and moderate income housing
22 of adequate standard, including any such housing constructed or
23 acquired as part of a housing program specifically intended to
24 provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall
25 be entitled to a credit for a unit if it demonstrates that (a) the
26 municipality issued a certificate of occupancy for the unit, which
27 was either newly constructed or rehabilitated between April 1, 1980
28 and December 15, 1986; (b) a construction code official certifies,
29 based upon a visual exterior survey, that the unit is in compliance
30 with pertinent construction code standards with respect to structural
31 elements, roofing, siding, doors and windows; (c) the household
32 occupying the unit certifies in writing, under penalty of perjury, that
33 it receives no greater income than that established pursuant to
34 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for
35 moderate income housing; and (d) the unit for which credit is
36 sought is affordable to low and moderate income households under
37 the standards established by the council at the time of filing of the
38 petition for substantive certification. It shall be sufficient if the
39 certification required in subparagraph (c) is signed by one member
40 of the household. A certification submitted pursuant to this
41 paragraph shall be reviewable only by the council or its staff and
42 shall not be a public record;

43 Nothing in P.L.1995, c.81 shall affect the validity of substantive
44

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 certification granted by the council prior to November 21, 1994, or
2 of a judgment of compliance entered by any court of competent
3 jurisdiction prior to that date. Additionally, any municipality that
4 received substantive certification or a judgment of compliance prior
5 to November 21, 1994 and filed a motion prior to November 21,
6 1994 to amend substantive certification or a judgment of
7 compliance for the purpose of obtaining credits, shall be entitled to
8 a determination of its right to credits pursuant to the standards
9 established by the Legislature prior to P.L.1995, c.81. Any
10 municipality that filed a motion prior to November 21, 1994 for the
11 purpose of obtaining credits, which motion was supported by the
12 results of a completed survey performed pursuant to council rules,
13 shall be entitled to a determination of its right to credits pursuant to
14 the standards established by the Legislature prior to P.L.1995, c.81;

15 (2) Municipal adjustment of the present and prospective fair
16 share based upon available vacant and developable land,
17 infrastructure considerations or environmental or historic
18 preservation factors and adjustments shall be made whenever:

19 (a) The preservation of historically or important architecture and
20 sites and their environs or environmentally sensitive lands may be
21 jeopardized,

22 (b) The established pattern of development in the community
23 would be drastically altered,

24 (c) Adequate land for recreational, conservation or agricultural
25 and farmland preservation purposes would not be provided,

26 (d) Adequate open space would not be provided,

27 (e) The pattern of development is contrary to the planning
28 designations in the State Development and Redevelopment Plan
29 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
30 (C.52:18A-196 et seq.),

31 (f) Vacant and developable land is not available in the
32 municipality, and

33 (g) Adequate public facilities and infrastructure capacities are
34 not available, or would result in costs prohibitive to the public if
35 provided.

36 (3) (Deleted by amendment, P.L.1993, c.31).

37 d. Provide population and household projections for the State
38 and housing regions;

39 e. In its discretion, place a limit, based on a percentage of
40 existing housing stock in a municipality and any other criteria
41 including employment opportunities which the council deems
42 appropriate, upon the aggregate number of units which may be
43 allocated to a municipality as its fair share of the region's present
44 and prospective need for low and moderate income housing. No
45 municipality shall be required to address a fair share of housing
46 units affordable to households with a gross household income of
47 less than 80% of the median gross household income beyond 1,000
48 units within ten years from the grant of substantive certification,

1 unless it is demonstrated, following objection by an interested party
2 and an evidentiary hearing, based upon the facts and circumstances
3 of the affected municipality that it is likely that the municipality
4 through its zoning powers could create a realistic opportunity for
5 more than 1,000 low and moderate income units within that ten-
6 year period. For the purposes of this section, the facts and
7 circumstances which shall determine whether a municipality's fair
8 share shall exceed 1,000 units, as provided above, shall be a finding
9 that the municipality has issued more than 5,000 certificates of
10 occupancy for residential units in the ten-year period preceding the
11 petition for substantive certification in connection with which the
12 objection was filed.

13 f. For the purpose of crediting against a fair share obligation,
14 the council shall permit a municipality to satisfy no less than one
15 unit of its fair share obligation for each unit of housing that is:

16 (1) existing or constructed on, or appurtenant to, lands in
17 agricultural use; and

18 (2) used exclusively as a dwelling for any low- or moderate-
19 income migrant worker or seasonal farm worker employed in
20 agricultural work.

21 For the purpose of calculating a municipality's fair share housing
22 obligation, construction of housing that may be credited against a
23 municipality's fair share pursuant to this subsection shall not incur
24 any prospective housing need.

25 For the purpose of crediting low and moderate income housing
26 units in order to arrive at a determination of present and prospective
27 fair share, as set forth in paragraph (1) of subsection c. of this
28 section, housing units comprised in a community residence for the
29 developmentally disabled, as defined in section 2 of P.L.1977,
30 c.448 (C.30:11B-2), shall be fully credited pursuant to rules
31 promulgated or to be promulgated by the council, to the extent that
32 the units are affordable to persons of low and moderate income and
33 are available to the general public.

34 The council, with respect to any municipality seeking substantive
35 certification, shall require that a minimum percentage of housing
36 units in any residential development resulting from a zoning change
37 made to a previously non-residentially-zoned property, where the
38 change in zoning precedes or follows the application for residential
39 development by no more than 24 months, be reserved for occupancy
40 by low or moderate income households, which percentage shall be
41 determined by the council based on economic feasibility with
42 consideration for the proposed density of development.

43 In carrying out the above duties, including, but not limited to,
44 present and prospective need estimations the council shall give
45 appropriate weight to pertinent research studies, government
46 reports, decisions of other branches of government, implementation
47 of the State Development and Redevelopment Plan prepared
48 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196

1 et seq.) and public comment. To assist the council, the State
2 Planning Commission established under that act shall provide the
3 council annually with economic growth, development and decline
4 projections for each housing region for the next ten years. The
5 council shall develop procedures for periodically adjusting regional
6 need based upon the low and moderate income housing that is
7 provided in the region through any federal, State, municipal or
8 private housing program.

9 No housing unit subject to the provisions of section 5 of
10 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
11 barrier free subcode adopted by the Commissioner of Community
12 Affairs pursuant to the "State Uniform Construction Code Act,"
13 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
14 inclusion in the municipal fair share plan certified by the council
15 unless the unit complies with the requirements set forth thereunder.
16 (cf: P.L.2008, c.46, s.6)

17
18 2. This act shall take effect immediately.
19
20

21 STATEMENT

22
23 This bill provides municipalities with credit against their fair
24 share affordable housing obligation for dwellings produced for the
25 use of migrant farm workers. This legislation requires the Council
26 on Affordable Housing to permit a municipality to credit units built
27 for the use of seasonal farm workers against the municipality's fair
28 share obligation. Units produced for temporary farm workers do not
29 generate an affordable housing obligation pursuant to the "Fair
30 Housing Act," N.J.S.A.52:27D-301 et al., because the dwellings are
31 not intended for market-rate consumption. Units of housing
32 produced for low- and moderate-income families necessarily fall
33 within the definition of affordable housing because they are an
34 actual source of housing for workers whose incomes are likely to be
35 well below an area median.